

Nuclear Regulatory Commission

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safety or the common defense and security;

(2) The threat cannot be mitigated by any alternative that is consistent with public health and safety; and

(3) The generator of low-level waste and the State have diligently though unsuccessfully acted during the period of the initial grant to eliminate the need for emergency access.

(b) After making a determination pursuant to paragraph (a) of this section, the requirements specified in §§ 62.21(c) and 62.22 of this part, must be followed.

§ 62.25 Criteria for a Commission determination.

(a) In making the determination required by § 62.21(a) of this part, the Commission will determine whether the circumstances described in the request for emergency access create a serious and immediate threat to the public health and safety or the common defense and security.

(b) In making the determination that a serious and immediate threat exists to the public health and safety, the Commission will consider, notwithstanding the availability of any alternative identified in § 62.13 of this part:

(1) The nature and extent of the radiation hazard that would result from the denial of emergency access, including consideration of—

(i) The standards for radiation protection contained in part 20 of this chapter;

(ii) Any standards governing the release of radioactive materials to the general environment that are applicable to the facility that generated the low level waste; and

(iii) Any other Commission requirements specifically applicable to the facility or activity that is the subject of the emergency access request; and

(2) The extent to which essential services affecting the public health and safety (such as medical, therapeutic, diagnostic, or research activities) will be disrupted by the denial of emergency access.

(c) For purposes of granting temporary emergency access under § 62.23 of this part, the Commission will consider the criteria contained in the Commission's Policy Statement (45 FR

10950, February 24, 1977) for determining whether an event at a facility or activity licensed or otherwise regulated by the Commission is an abnormal occurrence within the purview of section 208 of the Energy Reorganization Act of 1974.

(d) In making the determination that a serious and immediate threat to the common defense and security exists, the Commission will consider, notwithstanding the availability of any alternative identified in § 62.13 of this part:

(1) Whether the activity generating the wastes is necessary to the protection of the common defense and security, and

(2) Whether the lack of access to a disposal site would result in a significant disruption in that activity that would seriously threaten the common defense and security.

The Commission will consider the views of the Department of Defense (DOD) and or the Department of Energy (DOE) regarding the importance of the activities responsible for generating the LLW to the common defense and security, when evaluating requests based all, or in part, on a serious and immediate threat to the common defense and security.

(e) In making the determination required by § 62.21(a)(2) of this part, the Commission will consider whether the person submitting the request—

(1) Has identified and evaluated any alternative that could mitigate the need for emergency access; and

(2) Has considered all pertinent factors in its evaluation of alternatives including state-of-the-art technology and impacts on public health and safety.

(f) In making the determination required by § 62.21(a)(2) of this part, the Commission will consider implementation of an alternative to be unreasonable if:

(1) It adversely affects public health and safety, the environment, or the common defense and security; or

(2) It results in a significant curtailment or cessation of essential services, affecting public health and safety or the common defense and security; or

(3) It is beyond the technical and economic capabilities of the person requesting emergency access; or

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(4) Implementation of the alternative would conflict with applicable State or local or Federal laws and regulations; or

(5) It cannot be implemented in a timely manner.

(g) The Commission shall make an affirmative determination under § 62.21(a) of this part only if all of the alternatives that were considered are found to be unreasonable.

(h) As part of its mandated evaluation of the alternatives that were considered by the generator, the Commission shall consider the characteristics of the wastes (including: physical properties, chemical properties, radioactivity, pathogenicity, infectiousness, and toxicity, pyrophoricity, and explosive potential); condition of current container; potential for contaminating the disposal site; the technologies or combination of technologies available for treatment of the waste (including incinerators; evaporators-crystallizers; fluidized bed dryers; thin film evaporators; extruders, evaporators; and Compactors); the suitability of volume reduction equipment to the circumstances (specific activity considerations, actual volume reduction factors, generation of secondary wastes, equipment contamination, effluent releases, worker exposure, and equipment availability); and the administrative controls which could be applied, in making a determination whether waste to be delivered for disposal under this part has been reduced in volume to the maximum extent practicable using available technology.

§ 62.26 Criteria for designating a disposal facility.

(a) The Commission shall designate an appropriate non-Federal or regional disposal facility if an affirmative determination is made pursuant to §§ 62.21, 62.23, or 62.24 of this part.

(b) The Commission will exclude a disposal facility from consideration if:

(1) The low-level radioactive wastes of the generator do not meet the criteria established by the license agreement or the license agreement of the facility; or

(2) The disposal facility is in excess of its approved capacity; or

(3) Granting emergency access would delay the closing of the disposal facility pursuant to plans established before the receipt of the request for emergency access; or

(4) The volume of waste requiring emergency access exceeds 20 percent of the total volume of low-level radioactive waste accepted for disposal at the facility during the previous calendar year.

(c) If, after applying the exclusionary criteria in paragraph (b) of this section, more than one disposal facility is identified as appropriate for designation, the Commission will then consider additional factors in designating a facility or facilities including—

(1) Type of waste and its characteristics,

(2) Previous disposal practices,

(3) Transportation

(4) Radiological effects,

(5) Site capability for handling waste,

(6) The volume of emergency access waste previously accepted by each site both for the particular year and overall, and

(7) Any other considerations deemed appropriate by the Commission.

(d) The Commission, in making its designation, will also consider any information submitted by the operating non-Federal or regional LLW disposal sites, or any information submitted by the public in response to a FEDERAL REGISTER notice requesting comment, as provided in paragraph (b) of § 62.11 of this part.

Subpart D—Termination of Emergency Access

§ 62.31 Termination of emergency access.

(a) The Commission may terminate a grant of emergency access when emergency access is no longer necessary to eliminate an immediate threat to public health and safety or the common defense and security.

(b) The Commission may terminate a grant of emergency access if an applicant has provided inaccurate information in its application for emergency access or if the applicant has failed to comply with this part or any conditions set by the Commission pursuant to this part.